



Spain And The Intergovernmental Conference: The Arguments In Favour Of Retaining Nice

*Source: Spanish Ministry of Foreign Affairs **

The voting system in the Council of the Union

From the very beginnings of the European Community – later the European Union - the Council, which is the body in which Member States are represented, has operated under a system of weighted voting. The system takes account of the considerable population differences between Member States, although it lessens the impact of this population factor by also taking into consideration the principle of equality among the Member States. Thus, a mechanism ‘rewards’ the countries with the smallest populations, ensuring a reasonably balanced relationship between the different States. By way of example, prior to the Nice reform of December 2000, Luxembourg, with a population of approximately 350,000, had 2 votes in Council, the Netherlands (population approximately 15 million) had 5 votes, and Germany (82 million inhabitants then) had 10 votes.

As the EU has grown and new States have joined - for the most part small and medium-sized countries in terms of population - the original weighting of votes has had to be revisited, on account of the fact that the increase in the number of small States, when combined with the aforementioned ‘reward’, has resulted in a progressively unbalanced system, whereby a significant number of States representing a small percentage of the EU’s population held a disproportionate amount of power within the Council.

Following several attempts to reform the voting system and with a view to the forthcoming enlargement of the EU to incorporate countries of central and eastern Europe, agreement was finally reached in Nice in December 2000 on a re-weighting of votes, in order to reduce the reward given to the smallest countries and introduce a new balance between the different States (Luxembourg was given 4 votes, the Netherlands 13 and Germany 29).

The Treaty of Nice came into force on 1 February 2003 and the new weighting of votes will apply as of 1 November 2004.

Spain and the voting system

On joining the European Union, Spain was accorded medium/large country status and received eight votes in Council under the weighted voting system (as against the Netherlands’ 5 votes and Germany’s 10), two Commissioners (the same as Germany, France, Italy and the United Kingdom; the other Member States could only appoint one Commissioner) and 64 seats in the European Parliament (compared to the Netherlands’ 31 and Germany’s 87 prior to reunification, increased to 99 thereafter). In the Commission, therefore, Spain was treated on a par with the “big” members. At the Amsterdam IGC, the reform of the voting system was examined in the framework of an overall institutional package, under which seats in the European Parliament were redistributed to make room for the new Member States and members with 2 Commissioners were asked to relinquish one of the two. It was within this framework that consideration was given to the possibility of replacing the system of weighted voting for a

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double-majority system, taking into account Member States and their populations. France opposed all forms of double majority at the time, citing vital interests, namely, the loss of institutional parity with Germany in Council if the new voting system were adopted. In view of the failure to reach agreement, negotiations on the reform of the institutions were put back, as set out in the Protocol on institutions annexed to the Treaty of Amsterdam. Spain secured a formula that formally acknowledged the country's special situation in the institutions, i.e. as an medium/large country for whom giving up the second Commissioner represented a proportionally greater loss than was the case for other countries. This formula was set out in Declaration 50, which was annexed to the aforementioned Protocol on the institutions and specified that a solution to the "special case of Spain" would have to be found.

At the IGC in Nice, where France again firmly opposed the double majority formula, Spain and some other large countries accepted the reduction from two Commissioners to one. Moreover, Spain had to accept a proportionally greater sacrifice than other States in the case of the reduction in the number of seats in Parliament, from 64 to 54 in EU-25 and to 50 in EU-27. In return, its weight in Council was increased to 27 votes, the largest nations receiving 29 (compared to the former system of 8 vs. 10). This outcome was a direct result of Spain's coherent defence of her positions in the previous negotiations, particularly the aforementioned Amsterdam Declaration.

**Voting as envisaged by the draft constitutional Treaty drawn up by the Convention.
Overview of the background to the new reform**

The draft Treaty proposes that qualified majority in the Council be defined as 'half plus one' of the Member States, provided that they represent at least 60% (3/5) of the population.

The draft thus seeks to reopen the debate that had already been settled on this very issue at Nice, after difficult discussions and within the framework of a global "institutional package" covering voting in Council, the distribution of seats in the European Parliament and the make-up of the Commission.

In assessing the merits of this proposal, it should be recalled that at the Nice European Council it was stated that "the new [Nice] Treaty reinforces the legitimacy, the efficiency and the public acceptability of the institutions and allows for reaffirmation of the strong commitment to the EU with the process of enlargement", and that "the European Council considers that after the entry into force of the Treaty of Nice the EU will be able to welcome new Member States". In the same vein, the Declaration on the future of the EU, an appendix to the Final Act of the Conference, stresses that "with the ratification of the Treaty of Nice the European Union will have completed the necessary institutional changes for the accession of new Member States". It is also worth recalling that there is no basis in the Laeken Declaration of December 2001, which convened the European Convention, to warrant revisiting the institutional agreements reached at Nice. Lastly, one should not overlook the fact that said arrangements were ratified by all Member States, including the accession countries, as recently as 16 April, on the occasion of the signing of the Accession Treaty in Athens.

It should be noted also that, following the debates in the Convention, the draft of the new Treaty maintains the distribution of seats in the European Parliament agreed in Nice (modification is provided for as of 2009, but only if agreed unanimously) and ultimately applies the Nice provisions on the reform of the Commission (with the introduction of a smaller College of Commissioners as of 2009). The President of the Convention, despite his initial reluctance, was forced to make these "concessions to Nice" in order to isolate Spain's position in the Convention Presidium and thus secure backing for the proposed reform of the voting system.

This creates, at least in Spain's opinion, a system that is unbalanced on three counts. On the institutional level, because a system of weighted representation is opted for in the case of the European Parliament, the population criterion being applied degressively in order to benefit the smallest countries. In the Council, where weighted voting has been in operation since 1957, the proposal is to apply a principle of representation proportional to population (partly qualified by the rule that a majority of Member States is also required to adopt a decision - a rule which, incidentally, was already provided for in Nice). The system is also unbalanced as regards the relations between Member States, given that, on the pretext of improving the efficiency of the decision-making system, in fact a redistribution of power between the Member States is introduced that clearly works to the benefit of the most populous countries, but without making any visible improvement to the efficiency of the decision-making process. The proposed system disadvantages Spain in particular, as it addresses just one of the three components of the institutional equation, specifically the area in which Spain was compensated in Nice in return for agreeing to cede on the other two.

**The vote in the draft constitutional Treaty drawn up by the Convention.
Considerations on the proposal**

For Spain the change from the voting system agreed on in Nice to the one proposed by the draft of the new Treaty is extremely negative. Although in absolute terms it could be argued that it results in an increase in Spain's weight in the Council (under Nice, Spain's 27 votes of a total of 321 in an EU-25 equates to 8.41%; under the proposal in the new Treaty, 40 million Spaniards out of a total of 450 million people in EU-25 equals 8.88%) the fact of the matter is that Spain's relative weight, i.e. the power to influence decisions in Council is severely and adversely modified.

By way of illustration, under the Nice system, in a 25-member EU - the system that enters force as of 1 November next year-, a qualified majority is reached with 232 votes in the Council out of a total of 321. Consequently, 90 votes are required to condition negotiations through what is known as a blocking minority. The combined votes of Spain and Poland add up to 54, and hence only three small-medium countries, such as Portugal, Hungary and Greece (with 12 votes each), would be needed also to form a blocking minority.

Under the proposal set out in the new Treaty, Member States wanting to block a specific measure would need to represent 40% of the EU population, i.e. around 180 million out of a total of 450. This means that, to go back to the example given above, Spain and Poland, which together have 80 million, would need, on the basis of the populations of the current EU-25, the backing of almost ALL, LITERALLY, almost ALL, the other Member States of the EU, apart from the Big Four, to block a proposal. Hence Spain and Poland would have to enlist the support of another eleven "partners" to secure a blocking minority, but based not on the population criterion, rather on the number of Member States.

The situation would be essentially the same in an EU of 27 members (including Romania and Bulgaria).

Put another way, the double-majority system proposed for the new Treaty theoretically places the EU in the hands of the big six, including Spain and Poland. However, in view of the considerable differences in population between Spain/Poland and the other large countries, in practice the four biggest countries will control matters and Spain and Poland's possibilities will be greatly reduced when it comes to finding potential allies. Without the support of at least one large country (or even two, if Germany were not one of them) it would be almost impossible for Spain to block a decision which was detrimental to our interests.

Arguments in defence of the voting system agreed in Nice

The Spanish Government's position is grounded on solid arguments.

a) The Convention, in our opinion, lacked both legitimacy and a mandate to reopen the Nice institutional agreements.

It lacked legitimacy because the Convention was convened by the Declaration on the future of the EU adopted by the Nice Intergovernmental Conference of 2000, where the conditions for a debate on the required reforms were established, but it was previously stated that "with the ratification of the Treaty of Nice the European Union will have completed the necessary institutional changes for the accession of the new Member States".

Neither was it mandated to revisit Nice because there is no such mention in the Laeken Declaration of December 2001 formally establishing the European Convention.

b) We believe also that the general interests of the EU are at stake. With the double-majority system proposed the EU would, in practice, end up being governed by the four most populous Member States.

c) We consider the institutional proposal tabled for discussion at the IGC to be seriously unbalanced: it applies a weighted (population) criterion for the distribution of seats in the European Parliament, the body most representative of Europe's citizens - who by definition are all equal-, and a purely proportional criterion in setting the weight of each State in Council, the body where the demographic factor ought to be off-set in some manner by the principle of equality among the member States.

This is why a majority of Member States believe that the voting system agreed upon at Nice, whilst not perfect, does nonetheless reflect best an adequate compromise between the interests of the different Member States.

d) In our opinion, the argument repeatedly raised by advocates of the Convention proposal, namely, that the double-majority system is best because it is easier for the man in the street to understand, is absurd and fallacious. Under that same argument, there would be grounds for enforcement "an eye for an eye" approach instead of contemporary Penal Codes.

It is worth noting also that the Nice voting system appears more complicated on paper than is in fact the case. Two requirements must be met in order to obtain a qualified majority: a given number of votes (232/321 in a 25-member EU or 255/345 in a 27-member EU) and the support of at least half the Member States, although a country can request that it be verified whether said States represent at least 62% of the population of the EU (a condition introduced at Germany's request). In practice, however, the system is much more straightforward: the number of States and percentage of population criteria are not met in a mere 0.00085% of the cases where the required number of votes is obtained.

In short, assuming, as some appear to do, that European citizens are not very conversant with mathematics, it would seem easier and more transparent to add together States and votes, in a calculation that involves three-digit figures, than to add together States and populations, which would entail much larger figures.

e) We believe, moreover, that the double-majority system could, in practice, be even more difficult to implement than weighted voting. Once the details are finalised, the weighted voting method applies automatically, until such times as further new members join the EU

(but this, in any case, would not alter the bases of the system). Conversely, the double-majority system would require complex negotiation to determine what is meant by the 'population' of a Member State and equally complex negotiation to establish the mechanisms for adjusting population figures to take account of demographic changes in each Member State.

In this regard, it is argued at times that one of the advantages of the proposed system is that it too would apply automatically, thus avoiding the need for protracted negotiations on the allocation of votes to new members with each new accession. Here again, it is a simplistic argument that seeks to replace politics with mathematics and overlooks that negotiations will still be needed on other issues, including institutional ones, - for example, seats in Parliament, where once again proportional representation reasoning is not applied. One could even say that, by advocating application of the population criterion, we would be bringing forward the debate on future accessions: acceptance of this criterion could be tantamount to questioning the future accession of States whose current or potential population could fundamentally alter the balance of power between the Member States (i.e. Turkey)

f)As far as the allegedly more efficient decision-making brought about by the system proposed by the Convention is concerned, the following observations are relevant:

-It is possible, as indeed some have argued, that of the 2.7 million voting combinations in the Nice system in a 27-member EU, only 2.1% meet the conditions necessary to obtain a qualified majority.

But care must be taken with the fallacies lurking behind these impressive numbers. The percentage of failed combinations is so high precisely because the system distributes power generously among Member States, giving extra weight to the least populous, and many Member States are small or medium-sized in terms of population. Moreover, 2.1% of 2.7 million is, may well be a small figure from the mathematical standpoint, but it translates to 56,700 combinations of successful votes, which is a very high number from the political standpoint.

-The voting system proposed by the Convention means that 21.9% of the possible voting combinations reach a qualified majority.

But this alone is not proof that the system is more efficient, given that it soon becomes apparent that the basis for this supposed increased efficiency is rooted simply in the concentration of real decision-making power in fewer hands, basically the four largest Member States. To stretch the argument further, mathematically speaking, the most efficient decision-making system in a given group is one that places all the power in the hands of one individual: 100% efficiency.

Moreover, it is somewhat surprising that those in favour of reforming the Nice voting system claim that the system proposed by the Convention is more democratic. This argument can only mean that, in their opinion, truly democratic representation is only that based on a purely proportional system - which incidentally is not used in Member States, particularly those with Upper House representing federal States. The reverse argument would be that those who use corrective devices to facilitate representation of minority or weaker positions are not democratic. That is a political nonsense, which flies in the face of all modern developments in constitutional theory on democratic systems.

Final remarks

Certain European leaders have recently criticised Spain (and Poland) over the voting system controversy, accusing them of seeking to stall the Conference and veto the

adoption of the new constitutional EU Treaty. Perhaps the “burden of proof” should be reversed and Member States who ardently defend, even with threats, the voting system proposed by the Convention should be asked whether they would be prepared to block the new Treaty on the mere grounds that it did not reform the voting system agreed at Nice.